

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Wireline Competition Bureau Proceeding to Consider)
Triangle Communications Systems, Inc.'s Petitions) WC Docket No. 09-197
for Agreement in Redefining the Service Areas of)
Rural Telephone Companies in Montana)

**Comments of the
Montana Telecommunications Association**

Submitted by:

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The Montana Telecommunications Association (“MTA”) represents shareholder-owned commercial, and member-owned cooperative telecommunications service providers offering advanced telecommunications applications to nearly ninety percent of the wireline telecommunications service consumers in Montana.

MTA filed comments on September 16, 2011 in response to the Commission’s request for comment on the above-referenced matter.¹ We reference those comments herein and request that they be considered a part of the record in this Proceeding.

As discussed in its September 16, 2011 comments, MTA raised a number of issues we believe warrant the Federal Communications Commission’s (“Commission”) attention and resolution² prior to the Commission’s granting—or denying—Triangle Communications System’s (“TCS”) application for designation as a competitive eligible telecommunications carrier (“CETC”) in redefined portions of the study areas of Triangle Telephone Cooperative Association, Inc. (“TTC”) and Central Montana Communications, Inc. (“CMC”).

The Telecommunications Act states that “In the case of an area served by a rural telephone company, ‘service area’ means such company’s ‘study area’ unless and until the Commission and the States, after taking into account recommendations of a Federal-State Joint Board...establish a different definition of service area for such company.”³ Obviously, it takes both the Commission and the State to redefine a study area.

While the Montana Public Service Commission (“MTPSC”) granted a petition by TCS for designation as a CETC in redefined portions of the study areas of TTC and CMC,⁴ the Commission is under no obligation to rubber stamp

¹ Wireline Competition Bureau Seeks Comment on Triangle Communication Systems, Inc.’s Petitions for Agreement in Redefining the Service Areas of Rural Telephone Companies in Montana. DA 11-1417. WC Docket No. 09-197. (Rel. August 17, 2011).

² See *infra*, footnote 7.

³ 47 U.S.C. §214(e)(5).

⁴ *In the Matter of the Application of Triangle Communications System, Inc., Application for Designation as an Eligible Telecommunications Carrier*, Docket No. D2004.1.6. (January 16, 2004; amended November 23, 2005).

the MTPSC's Order.⁵ TCS argues in reply comments filed on October 3, 2011 that the issues presented by MTA are "irrelevant" and "academic" because the "MTPSC has already vetted high-cost support issues."⁶ TCS essentially is asking this Commission to grant TCS' application for study area redefinition simply because the MTPSC has done so. MTA believes the Commission should delve deeper into TCS' application.

In addition to the issues raised by MTA in its September comments,⁷ the Commission has issued the Connect America Fund Order ("Order"),⁸ which raises a number of additional potential issues for Commission consideration in the context of this Proceeding.

Study Area Waivers and the One-Percent Guideline

For example, the discussion of study area waivers in the Order raises relevant issues for Commission consideration. Specifically, the Order states,

In evaluating whether a study area boundary change will have an adverse impact on the universal service fund, the Commission historically analyzed whether a study area waiver would result in an annual aggregate shift in

⁵ See, *Standing Rock Telecommunications, Inc. Petition for Designation as an Eligible Telecommunications Carrier*, WC Docket 09-197, FCC 11-102, ¶23, (Rel. June 22, 2011). The Commission concluded that the "plain language of §214(e)(5) dictates that neither the Commission nor the states may act alone to alter the definition of service areas served by rural carriers."

⁶ *In the Matter of Triangle Communication Systems, Inc.*, Petitions for FCC Agreement to Redefine the Study Areas of Rural Telephone Companies in Montana. WC Docket No. 09-197. Reply Comments of Triangle Communication System, Inc. (October 3, 2011).

⁷ *In the Matter of Triangle Communication Systems, Inc.*, Petitions for FCC Agreement to Redefine the Study Areas of Rural Telephone Companies in Montana. WC Docket No. 09-197. Comments of the Montana Telecommunications Association. (September 16, 2011). MTA questioned the redefinition. MTA also raised questions about current and proposed service coverage and license areas in the areas proposed for redefinition; whether designation of additional ETCs has a dilutive effect on universal service resources; whether regulatory changes—particularly the CETC Cap Order—require a fresh look at TCS' application; about compliance with the Tribal exemption regarding eligible subscribers; *inter alia*.

⁸ *In the Matter of Connect America Fund* (WC Docket No. 10-90); National Broadband Plan for Our Future (GN Docket No. 09-51); Establishing Just and Reasonable Rates for Local Exchange Carriers (WC Docket No. 07-135); High-Cost Universal Service Support (WC Docket No. 05-337); Developing an Unified Intercarrier Compensation Regime (CC Docket No. 01-92); Federal-State Joint Board on Universal Service (CC Docket No. 96-45); Lifeline and Link-Up (WC Docket No. 03-109); Universal Service Reform—Mobility Fund (WT Docket No. 10-2008). FCC 11-161. (Rel. November 18, 2011).

an amount equal to or greater than one percent of nationwide high-cost support in the most recent calendar year.⁹

The Order finds that the one percent guideline was implemented in 1995 and the threshold for determining an adverse impact was substantially lower than today, if the same one percent guideline were applied to today's universal service High Cost Program. The Order therefore concludes that

the one-percent guideline is no longer an appropriate guideline to evaluate whether a study area waiver would result in an adverse effect on the fund... As proposed in the *USF/ICC Transformation NPRM*, our evaluation of the public interest benefits of a proposed study area waiver will include: (1) the number of lines at issue; (2) the projected universal service fund cost per line; and (3) whether such a grant would result in consolidation of study areas that facilitates reductions in cost by taking advantage of the economies of scale, *i.e.*, reduction in cost per line due to the increased number of lines.¹⁰

The MTPSC did not have the benefit of this discussion during its proceedings in 2006 and 2007 when it deliberated the merits of TCS' redefinition petition.

Partially Served Areas

The Order "eliminate[s] universal service support where an unsubsidized competitor—or a combination of unsubsidized competitors—offers voice and broadband service throughout an incumbent carrier's study area."¹¹ The Order further

Seek[s] comment on a process to reduce support where such an unsubsidized competitor offers voice and broadband service to a substantial majority, but not 100 percent of the study area.¹²

TCS technically is not an unsubsidized "competitor," since it is owned by TTC, whose study area it seeks to redefine. However, TCS offers unsubsidized

⁹ *Id.* ¶260.

¹⁰ *Id.* ¶265.

¹¹ *Id.* ¶281.

¹² *Id.*

wireless service in portions of the study areas of its wireline-based affiliates, TTC and CMC.

Further, in discussing the Mobility Fund, the Order finds that

It is certainly true that section 214(e) allows the states to designate more than one provider as an eligible telecommunications provider in any given area. But nothing in the statute compels the states (or this Commission) to do so; rather, the states (and this Commission) must determine whether that is in the public interest. Likewise, nothing in the statute compels that every party eligible for support actually receive it.¹³ (Footnote omitted.)

The Commission may want to explore the extent to which TCS offers unsubsidized service in its affiliates' areas, and the effect that granting redefinition, and thus CETC status, may have on the efficient use of universal service funds.

Tribal Mobility Fund

TCS "urges the Commission to grant the petitions [for redefinition] in order to allow TCS to provide crucial mobile telecommunications services in rural Montana, including low-income Tribal Areas."¹⁴

However, the Order establishes a Tribal Mobility Fund "to deploy mobile broadband to unserved Tribal lands."¹⁵ The Order envisions "that an auction will occur as soon as feasible after a general Mobility Fund Phase I auction."

The Order, further, requires ETCs serving Tribal lands to demonstrate the extent to which they "have meaningfully engaged Tribal governments in their supported areas."¹⁶

The Commission may wish to determine the extent to which the Tribal Exemption in the CETC Interim Cap Order, which TCS cites in its Petition for Redefinition,¹⁷ is superceded by the Connect America Fund Order.

¹³ *Id.* ¶318.

¹⁴ TCS Reply Comments, *op cit.* p.1.

¹⁵ *Id.* ¶481.

¹⁶ Order, *op cit.* ¶604. See also ¶¶636-637.

Conclusion

As MTA noted in its September 16, 2011 comments (as well as those filed in 2007, as referenced in its September 16, 2011 comments), the TCS Petitions for redefinition of TTC and CMC study areas raise a number of questions which warrant thorough analysis by the Commission. Additionally, the recently released Connect America Fund Order raises additional issues and potential conflicts that the Commission should resolve in the context of this Proceeding.

Respectfully submitted,

/s/

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¹⁷ *In the Matter of* Triangle Communication Systems, Inc., Petition for FCC Agreement to Redefine the Study area of a Rural Telephone Company in Montana—Central Montana Communications, Inc. WC Docket No. 09-197. (August 4, 2011) pp. 10-11.